IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7117 of 2005

For Approval and Signature:

HON'BLE MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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Versus

TALUKA DEVELOPMENT OFFICER

Appearance:

1. Special Civil Application No. 7117 of 2005

MR AMAR N BHATT for Petitioner No. 1

GOVERNMENT PLEADER for Respondent No. 1

..... for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE JAYANT PATEL

Date of decision: 26/04/2005

ORAL JUDGEMENT

Leave to delete the respondent No.1-Taluka Devp.Officer since the validity of Gujarat Land Revenue (3rd Amendment) Rules, 2003 is under challenge and the notices annexures A, AA, B and C are based on the said Rules.

2. Rule. Mr.Prachhak, Ld.AGP waives service of rule on behalf of respondent-State. With the consent of learned counsel for the parties matter is taken up for final hearing today.

3. Upon hearing Mr.Joshi for Mr.Bhatt for petitioner and Mr.Prachhak, Ld.AGP for the respondent-State, it appears that the issue involved in this petition so far as it relates to the challenge to the validity of the Rules, namely, Gujarat Land Revenue (3rd Amendment) Rules, 2003 is covered by the decision of this court in the matter of Gujarat Blacktrap Quarry Industries Association vs State of Gujarat reported in 2005(8) Gujarat High Court Judgments 461 wherein at para 21 this court observed as under:

> "In view of the aforesaid discussion, the impugned Rules of 2003 so far as they relate to giving rise to the revenue assessment of lands situated in C class for any other use to the extent of exceeding 15 times (in effect 15 ps per Sq.Mtr) is discriminatory and therefore unconstitutional and is violative of Article 14 of the Constitution and hence the impugned rules to that extent are declared as unconstitutional and void. As a consequence, the impugned rules for the aforesaid lands shall continue to operate for rise upto 15 times only and therefore the revenue recoverable for the aforesaid lands would be 15 ps per Sq.Mtr."

4. Consequently, the authority can not recover the amount of NA assessment exceeding 15ps per Sq.Mtr for "C" class category of the land and the action of the authority of recovering amount exceeding 15ps per Sq.Mtr for "C" class category deserves is declared ultravires and unconstitutional. However, it is clarified that in view of the aforesaid decision, the authority shall be entitled to recover NA revenue at the rate of 15ps per Sq.Mtr only.

As the authority shall be at liberty to recover the amount from the petitioner at the rate of 15ps per Sq.Mtr it is directed that the petitioner shall make the payment at the rate of 15ps per Sq.Mtr within a period of

two months from today.

5. Petition is partly allowed to the aforesaid extent. Rule partly made absolute. Considering the facts and circumstances of the case, there shall be no order as to costs.

26.4.05 (JAYANT PATEL,J)